

No. 87-580

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

Supreme Court, U.S.
FILED

DEC 9 1987

JOSEPH F. SPANIOL, JR.
CLERK

IN RE:

EARLENE POLYAK

Petitioner

PETITION FOR REHEAR
WRIT OF CERTIORARE

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

-or-

(305) 627-3564

EDITOR'S NOTE

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QUESTIONS PRESENTED

1. Is the State Trial Judge protected in the denial of due process and the deprivation of civil and constitutional rights and laws of the pro se litigant under "absolute judicial immunity in the United States District Courts?

2. Is the amendment of Rule 5(a) Tennessee Rules of Appellate Procedure in which the requirement that a copy of the notice of appeal be filed in the Court of Appeals on August 15, 1984, constitutional?

3. Is the enjoin of the District Judge against the pro se litigant filing complaints in the United States District Courts constitutional."

4. Is the affirming by the Court of Appeals of the District Judge's bias for various persons in the District and State Court abuse of discretion as to call for this Court's power of supervision?

5. Is the abuse of discretion by the District Judge and refusal to rescue grounds for new trials?



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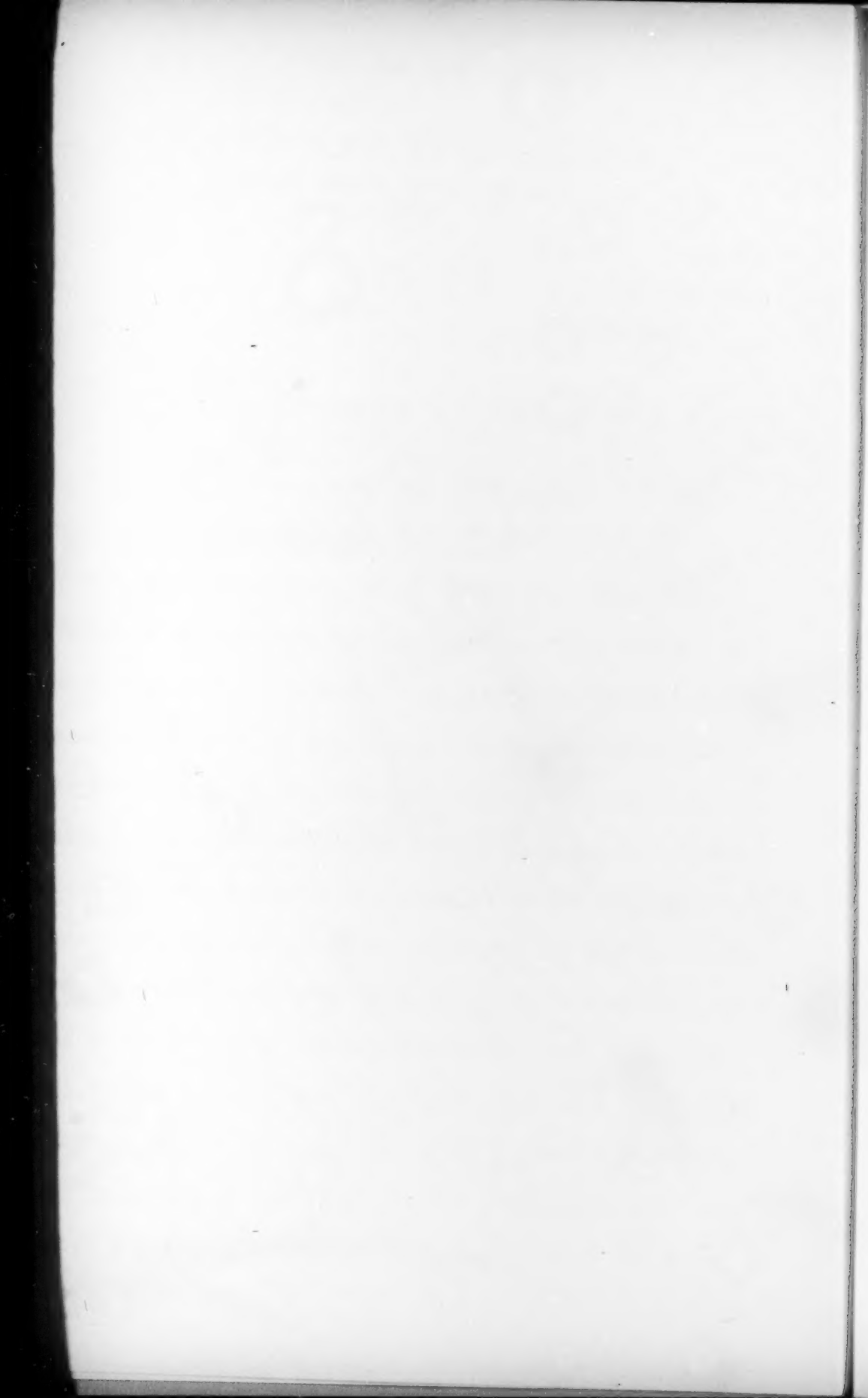
vs

THE HONORABLE THOMAS A WISEMAN'S
ORDER OF MAY 2, 1986, CLOSING CASES
NO. 1:84-0082; 1:84-0083; 1:85-0116;
1:85-0120; 1:85-0125 and 3:85X-108

PETITION TO REHEAR

Petitioner Earlene Polyak, petitions this Court to rehear writ of certiorari denied on November 16, 1987. This petition is grounded in the intervening circumstances of new evidence of the bias local prejudice and political influence in the above and companion cases, which Petitioner sought federal protection of diversity of citizenship involving the sale of her properties without due process and the deprivation of civil and constitutional rights and laws when she filed Complaint No. 1:85-0116 Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County. "This evidence is copied herein."

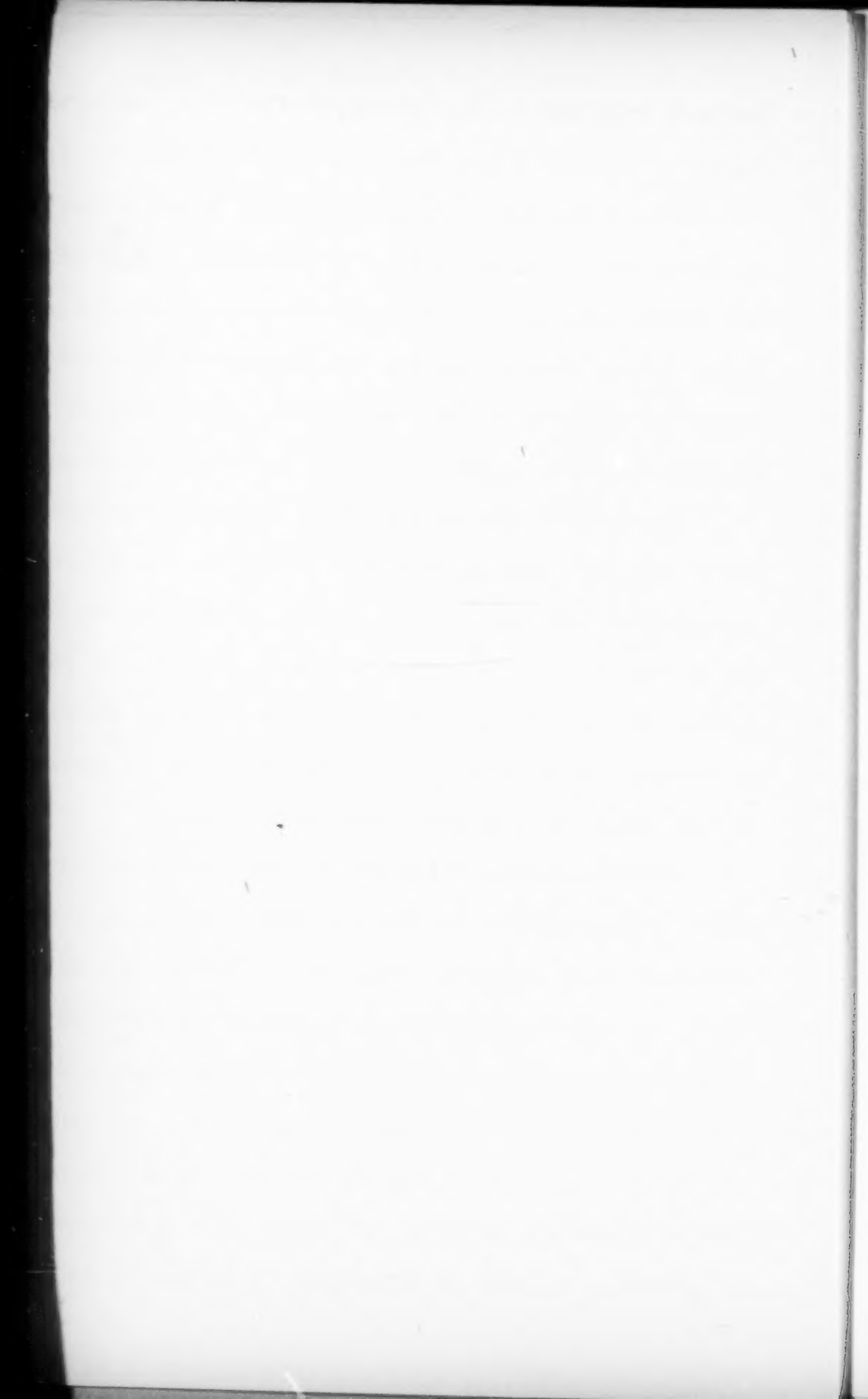
To Complaint No. 1:85-0116, Petitioner joined under 28 U.S.C. 144(c), 1:85-0120, Buford Evans v



Earlene Polyak(Counter-claim);1:85-0125, Earlene Polyak v Thomas Stack Henry Henry & Stack and 3:85X-108 Earlene Polyak v William Boston Bates & Holt.All of these cases arise out of 1:84-0082, Frank Hulen and Wilma Lesnansky v Earlene Polyak(Counter-claim). These cases were filed in the United States District Court in Nashville, but they were processed in the division of the District Court located in Columbia.

The United States Court of Appeals for the Sixth Circuit has sanctioned the abuse of discretion by the District Court in the dismissal of the above and companion cases without hearing or jury trials by affirming these dismissals with dismissal or denial in docket control to call for an exercise of the Supreme Court's power supervision.

The Honorable Thomas A Wiseman ordered the above cases closed on May 2, 1987. This order was enclosed with a letter to John P. Hehman on April 30, 1986, in answer to Writ of Mandamus No 86-5462 to file complaint against William Boston Boston Bates & Holt No. 1:86-0036. Judge Wiseman denied 3-85X-108 with order to enjoin Petitioner from filing further cases regarding the sale of her property in Lawrence County on November 13, 1985, No.1:85-0116.



In the letter of April 30, 1986, Judge Wiseman stated that order of November 30, 1985, "That order was entered because of previous filings of Mrs Polyak against various persons in this Court. Petitioner believes Judge Wiseman is referring in the division of District Court located with the state court in the same building where he presides in Columbia. Judge Hamilton and the above named lawyers handle cases in this Court.

Petitioner has never been given a time, place or date to defend against enjoin on November 13, 1985, and the Court of Appeals disregards two appeals to clear her of stigma without relief for placing complaint against Jim Hamilton et al.

The Honorable Thomas A. Higgins stated that she was guilty in order on May 12, 1986, 1:86-0036, and refused to rescue from Petitioner's motion stating that she believes Judge prejudices as a result of Judge Wiseman's order. On October 28, 1987, Judge Higgins dismissed cases while Petitioner was hospitalized for second heart surgery from October 20 to October 30, 1987.

On December 26, 1984, Judge Hamilton refused to rescue when Petitioner submitted motion to dis-

qualify from her cases because that she believed Judge prejudiced, and second case involving additional forty (40) acres of property was decided against her No. 1:85-0120 in Lawrence County.

Since this writ was submitted, Petitioner has been served with order to sell property at Public Auction on August 21, 1987, by Robert Boston, son of William Boston, Boston Bates & Holt(Ex. 1). Robert Boston has placed invalid lein for \$1112.76, awarded by Judge Wiseman No. 1:84-0083, against Petitioner's "interest therein " and lein without amount.(Ex. 2). Evans 1:85-0120, has placed leins against two properties to sell at Public Auction(Ex. 3).

Judge Higgins remanded Petitioner's complaint and counter-claim No 1:87-0075 submitted with express permission of the Court back to Chancery Court of Lawrence County and the order for sale at Public is before Judge Hamilton. Petitioner made \$1000.00 bond in Chancery Court and twice amount allegedly owed Evans but Leins signed by Clerks.

Petitioner sought federal protection local influence and prejudice but cases dismissed in District Court and Court of Appeals affirmed dismissals in docket control. It appears bias exists:

JUDGE ACCUSED OF BIAS
THE DEMOCRAT UNION

MOTTO: CRY ALOUD AND SPARE NOT MONDAY NOVEMBER 23, 1987

CIRCUIT JUDGE HAMILTON ASKED TO QUIT CASE

LAWRENCEBURG Circuit court Judge Hamilton refused to rescue himself from a case last week in which he was charged with bias toward a Lawrenceburg attorney.

Chattanooga attorney Stephen M Jacoway representing Deposit Recovery Corporation filed an affidavit in court Tuesday saying he was told by a local attorney that he could not get a fair trial if Hamilton was the presiding judge and local attorney Paul A. Bates was the defense attorney.

Bates is a partner in the local law firm Boston Bates Holt & Sands. William Boston resides as judge over Lawrenceburg city court.

Jacoway claimed in the affidavit that the attorney told him that "in a case where Paul A. Bates was opposing counsel and Judge James T Hamilton was the presiding judge, then it would be impossible for Deposit Recovery Corporation to win the trial, and a judgment would certainly be entered against Deposit Recovery Corporation regardless of the facts and circumstances of the case."

Jacoway did not name the local attorney;

Hamilton said he made the decision not to rescue himself from the case because he felt no need. He said Jacoway did not present any evidence to prove his charge except to call two witnesses to the stand who said they had heard the same charges.

"In my opinion, I didn't feel there was any grounds to it(motion to rescue himself)", he said.

He said there was no truth in Jacoway's affidavit.

"I try to be as fair as I possibly can" he said But every judge makes decisions that one side dosen't like. I've never in my life been charged with anything like this."

Hamilton has been circuit court judge since September 1982.

.....

This article was copied from a local newspaper in Lawrenceburg, Tennessee.

Mr. William Boston, Boston Bates & Holt represented our family since settlement by agreement initiated by cotenants in 1976. In 1982, Mr. Boston Boston Bates & Holt divided lolyalties and sued Petitioner for sale of property divided since 1976.

Judge Hamilton ruled in favor of William Boston Bates & Holt on July 29, 1983, for sale of Petitioner's property at Public Auction without any compensation for the restoration of the house on her agreed partition since 1976 for a retirement home. Judge Hamilton denied new trial on Dec. 19, 1983.

When Judge Hamilton subjected Petitioner to the second unjust and unfair trial without time to get attorney, no time to prepare and acutely ill, she filed Complaint 1:85-0116, for denial of due process deprivation of civil and constitutional rights and laws under the color of usage 42 USC Sec. 1983. Petitioner believes bias in District Court.

Judge Wiseman dismissed complaint within five days without jury trial. Judge Wiseman dismissed companion cases without hearing or jury trial and then sent order to the Court of Appeals closing cases on May 2, 1986. The Court of Appeals continues to sanction the dismissal of pro se litigant's cases with dismissals and denials in docket control. Petitioner believes that this bias local influence and prejudice is sanctioned by the Court of Appeals.

Petitioner believes that the sanction by the Court of Appeals of the District Court's departure



from the usual accepted course of proceedings in a federal court calls for the exercise of the Supreme Court's power of supervision.

CONCLUSION

Petitioner prays that a writ of certiorari issue from this Court to review thw above allegations. She prays for relief in the award of damages for the irreparable damage of loss of property and the loss of a right to never be regained to her retirement home. And in the alternative she prays for jury trials in the above cases.

On the 9th day of December, 1987.

Respectfully submitted,
Earlene Polyak(305) 627-3564
4063 Hood Road
Lake Park, Florida 33410

Certificate of Service

I certify that a true copy of this pleading has been mailed First Class to the Solicitor General Washington, District of Columbia 20530.

STATE OF FLORIDA
COUNTY OF PALM BEACH

I certify that this petition is submitted in good faith and not for delay.

NOTARY PUBLIC

My commission expires: _____



CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

Plaintiffs

vs

Civil Action No. 1974

EARLENE POLYAK

Defendant

ORDER

Upon motion of plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order: Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less than three

BEST AVAILABLE

separate issue of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for cash, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into



the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6 per cent of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of \$250.00, and shall pay from defendant's portion of the proceeds, all Court costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however to payment by the Clerk and Master all debts of all creditors of record of any party who have a lien against any interest in said lands as a result of liens against party's interest therein. Such liens of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this _____ day of September, 1987.

Hon Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Boston
Attorney for Plaintiffs

Lein placed by Robert Boston on December 12, 1984
NOTE BOOK 19 page 270 Lein Book 7 page 497-499
by Genvva Frisbee. This lein for undisclosed amount.
Lein placed by Robert Boston January 22, 1985
Note Book 19 page 280 Lein book 7 page 542 for
\$1112.76.

Mr. Boston's cost and attorney fees were
corrected in Court of Appeals to \$850.01. Mr.
Boston did not serve Appellant with a copy of
costs for objections. Costs presented in District
Court composed mostly of lang distance telephone
calls to this father, William Boston.



FILED Aug 24, 1987
Book 20 p. 191
Lein Book 9
Cathy H. McClellan
Geneva Frisby C&M

NOTICE OF CLAIM OF LEIN

TO:EARLENE POLYAK
LEINOR: BUFORD EVANS

Please be notified that I, Buford Evans, individually and as Evans Realty and Acution Company, claim a lein against any interest the above person holds in herinafter described tract of real property in Lawrence County, Tennessee by virtue of a judgment obtained against Earlene Polyak in the amount of \$485.00(\$475.00), plus cost and interest in Case No. #1067, Circuit Court of Lawrence County Tennessee.

Said property originally consisted of two tracts described in Deed Book 44, Page 94, ROLC, Tennessee, being the property of E.R. Hulen and deeded to Rena Hulen, widow of E.R. Hulen from Frank Hulen and wife, Dora Lee, Earleen Hulen Hill and husband J.H., and Wilma Hulen Lesnansky and husband Michael by Deed if record in Book 89 pp. 175, ROLC, Tennessee and more particularly described as follows:

Situated, lying and being in the old 14th Civil District(now 3rd) of Lawrence County and begining at a stone in the turn of Jones-

town Road:thence east with said road 96 poles to the southeast corner of the tract of land which this a part; thence north 71 poles to a stake in the east boundary of said tract of land of which this is a part;thence west 96 poles to a willow oak in west boundary of said tract of land of which this is a part; thense south 71 poles to the begininng and containing 42½ acres, more or less.

This the ____24th day of August 1987.

STATE OF TENNESSEE
COUNTY OF LAWRENCE

Signed Buford Evans

Sworn to and suscribed before me this 24th day of August 1987.

NOTARY PUBLIC
CERTIFICATE OF SERVICE

I, Bufors Evans hereby certify I mailed a true and exact copy of this instrument to Earlene Polyak 3179 Middlefield Drive Trenton, Michigan 48183 on the 24th day of August 1987.

Signed Buford Evans

Mr. Evans filed a lein on February 10, 1986
N_ote Book 19 Page 396 Book 8 page 18549